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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,691	03/30/2001	William Hreha	PA-Y1007	9223

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EXAMINER	
SALL, EL HADJI MALICK	
ART UNIT	**PAPER NUMBER**
2157	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/822,691	**Applicant(s)** HREHA ET AL.	
	Examiner El Hadji M. Sall	**Art Unit** 2157	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: the same arguments were presented in the previous communication. Explanation has been given in the final office action.

(A) As to claim 1, Applicants respectfully disagree that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Connors in view of Baker to provide an Internet protocol network, the motivation being to allow access to the Internet. Applicants respectfully contend that Connors '267, directed to services packet-switched satellite networks, is not properly combinable with Baker '231, directed to dynamic weighted resource sharing, since in neither reference is there any suggestion, implication or motivation to combine one with the other, aside from Applicants' own specification
In regards to point (A), examiner respectfully disagrees, and further Connors teaches an Internet protocol network.
On column 5, lines 12-14, Connors discloses the MAC protocol described herein can be used with video conferencing tools running over the Internet.

(B) As to claim 1, applicant argues that Baker does little to cure this deficiency at col. 5, lines 26-29 relied upon by the Examiner. It is not clear to Applicants that the identifying of the packet's Assured Forwarding class as disclosed in Baker '267 at col. 5, lines 27 et seq. contemplates the classifier of Applicants which identifies specific types of messages. Further, as recited above, Applicants respectfully submit that it is highly improbable that one of ordinary skill in the art would be motivated to combine Baker with the non-analogous Connors, there being no motivation, suggestion or implication to do so in either reference as recited above.
Therefore, Applicants respectfully disagree that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Connors in view of Baker to provide a classifier for identifying specific types of messages, the motivation being to allow policies for sharing resources among multiple service classes to be enforced as contended by the Examiner.
Further, Applicants respectfully submit that Connors .267, aside from the use of a satellite and a demand assign multiple access (DAMA), is completely non-analogous and neither teaches, suggests or implies the system as defined in claim 1 of the instant claims.
In regards to point (B), examiner respectfully disagrees.
In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, on column 5, lines 26-29, Baker discloses a classifier 302 checks a special Differentiated Services (i.e. offerings that can be classified by type, or quality, of service) field of each packet header to identify the packet's Assured Forwarding class (i.e. a message)). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Connors in view of Baker to provide a classifier for identifying specific types of messages. Examiner points out that there is a motivation to combine Baker with Connors to prioritize real time traffic for a higher fee.

(C) As to claim 1, Applicants respectfully disagree that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Connors in view of Baker to provide an Internet protocol network, the motivation being to allow access to the Internet. Applicants respectfully contend that Connors '267, directed to services packet-switched satellite networks, is not properly combinable with Baker '231, directed to dynamic weighted resource sharing, since in neither reference is there any suggestion, implication or motivation to combine one with the other, aside from Applicants' own specification
In regards to point (C), examiner respectfully disagrees.
In response to applicant's argument that Connors is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Connors is not non-analogous. Connors teaches an Internet protocol network (column 5, lines 12-14, Connors discloses the MAC protocol described herein can be used with video conferencing tools running over the Internet). In response to applicant's arguments, the recitation that Connors .267 does not employ a gateway that interfaces to an Internet service provider or corporate network; a local area network edge device, a satellite that provides a communication link between the gateway and the local area network edge device has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

(D) As to claim 2, Connors teaches the dynamic resources allocation system recited in claim 1 wherein the satellite is a non-processing satellite, not Baker.

ARIO ETIENNE
SUPERVISORY PATENT EXAMINER